

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BLAINE HAWLEY)	
Claimant)	
VS.)	
)	
HOME FRAMING, INC.)	Docket No. 248,086
Respondent)	
AND)	
)	
KANSAS BUILDERS INDUSTRY)	
WORKER'S COMPENSATION FUND)	
Insurance Fund)	

ORDER

Respondent and its insurance fund appealed the January 11, 2001 Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on August 29, 2001, in Topeka, Kansas.

APPEARANCES

Sally G. Kelsey of Lawrence, Kansas, appeared for claimant. Matthew S. Crowley of Topeka, Kansas, appeared for respondent and its insurance fund.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an August 30, 1999 accident in which claimant fell eight feet off a ladder and allegedly injured his mid and low back. The parties litigated the claim and Judge Avery awarded claimant benefits for a seven percent whole body functional impairment for injuries claimant sustained to the low back.

Respondent and its insurance fund contend Judge Avery erred. They contend that claimant permanently injured his low back only and should receive benefits for a whole

body functional impairment in the range of three to five percent. In their brief filed with the Board, respondent and its insurance fund also argued that claimant's request for future medical treatment should be denied. But at oral argument before the Board, respondent and its insurance fund withdrew that issue from consideration, reserving their right to challenge any future requests for medical treatment.

Conversely, claimant contends he injured both his thoracic and lumbar spine in the accident and should receive benefits based upon Dr. Peter Bieri's nine percent whole body functional impairment rating. Claimant also contends Dr. Bieri's analysis of claimant's functional impairment is more consistent with the *AMA Guides to the Evaluation of Permanent Impairment* (AMA Guides) than Dr. George Parkins' analysis. Therefore, claimant requests the Board to enter an award for a seven to nine percent whole body functional impairment.

The only issue before the Board on this appeal is the extent of permanent functional impairment claimant sustained as a result of the August 30, 1999 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award should be affirmed. The Board affirms the Judge's finding that the evidence proves claimant permanently injured his lumbar spine in the August 30, 1999 accident when he fell from a ladder. The Board also affirms the Judge's finding that claimant sustained a seven percent whole body functional impairment as a result of that accident.

The Board finds Dr. Peter Bieri's expert medical opinions more persuasive than those of Dr. George Parkins. Considering the doctors' testimonies, the Board is persuaded that Dr. Bieri's analysis of claimant's functional impairment was more in compliance with the *AMA Guides* than Dr. Parkins' analysis.

The Board agrees with the Judge's determination that claimant failed to prove that he permanently injured his thoracic spine in the August 1999 accident. Dr. Bieri rated claimant's thoracic spine believing that it was asymptomatic before the August 1999 accident. But at Dr. Bieri's deposition, respondent and its insurance fund presented to the doctor a May 1999 letter that indicated claimant had injured his thoracic spine in a traffic accident. Claimant had failed to previously mention the traffic accident to Dr. Bieri and, likewise, had failed to mention the traffic accident during the regular hearing when he was asked about earlier injuries to his back.

Because Dr. Bieri's opinion regarding permanent injury to the thoracic spine was based upon an inaccurate and incomplete history, the Board finds that claimant has failed to prove that he sustained permanent injury to the thoracic spine as a result of the August

1999 accident and, therefore, claimant should receive permanent partial general disability benefits for permanent injuries to the lumbar spine only.

The Board adopts the findings and conclusions of the Judge as set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Board affirms the January 11, 2001 Award.

Claimant may request additional medical treatment in a proper application to the Workers Compensation Director.

IT IS SO ORDERED.

Dated this ____ day of September 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Sally G. Kelsey, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and its Insurance Fund
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director